IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 37 OF 2000.

Savio Almeida,
of full age, businessman,
residing at Altinho,
Panaji, Goa. .... Petitioner.

Versus

1. Estate Officer and
Officer on Special Duty,
with office at Kadamba Bus Stand,
Panaji, Goa.

2. Appellate Officer and
District Judge, North Goa
District, Panaji, Goa.

3. Kadamba Transport Corporation
with head office at Kadamba
Bus Stand, Panaji, Goa.

4. Deputy Collector and
Recovery Officer,
with office at the
Collectorate, Panaji, Goa. .... Respondents.

Mr. M.B. D'Costa, Senior Advocate with Mr. J.A. Lobo, Advocate for the Petitioner.

Mrs. W. Coutinho, Govt. Advocate for the Respondents No. 1 and 4.

Mr. A.R. Kantak, Advocate for the Respondent No.3.

CORAM: DR. S. RADHAKRISHNAN, J.

DATE: 5th OCTOBER, 2006.

ORAL JUDGMENT:

The petitioner is challenging the Order dated 8th June, 1999 passed by the learned Estate Officer on Special Duty of Kadamba Transport Corporation Limited, as well as the Judgment and Order dated 18th September, 1999 passed by the learned District and Sessions Judge, North Goa, Panaji in an appeal, confirming the Order of the learned Estate Officer.

2. The brief facts are that the petitioner was allotted a canteen premises on a leave and licence basis by the respondent Kadamba Transport Corporation Ltd. and after negotiation, licence fee was fixed at Rs.32,500/- per month. It is the case of the respondent Corporation that the petitioner was put in possession of the canteen premises consisting of two floors, namely ground floor and first floor in the month of April, 1989 and that the petitioner actually commenced the canteen with effect from 9th June, 1989. The short grievance in the above matter is that the said Kadamba Transport Corporation Ltd. had demanded the licence fee from the petitioner from the month of June, 1989 till August, 1989. There is no dispute that from the month of September, 1989 the petitioner herein was paying the licence fee regularly.

3. On the failure of the petitioner to pay the licence fee for the

aforesaid three months, proceedings were initiated against the petitioner by the respondent Corporation as per the provisions of the Goa Public Premises (Eviction of Unauthorised Occupants) Act 1988 (hereinafter referred to as the said Act). In the said proceedings the petitioner was allowed to file a written statement and the learned Estate Officer recorded detailed evidence on behalf of the applicant as well as the respondent Corporation and based on the material produced before the learned Estate Officer, after appreciating the evidence and material on record, came to the conclusion that the petitioner was liable to pay the respondent Corporation a sum of Rs.88,833.33 along with simple interest at the rate of 10% per annum with effect from 28th December, 1991 till final payment.

4. Aggrieved by the aforesaid order of the learned Estate Officer the petitioner herein had filed an appeal before the learned District and Sessions Judge, North Goa, Panaji under the provisions of the said Act. The learned District Judge, after a detailed analysis of the evidence and the material on record, concurred with the view of the learned Estate Officer and declined to interfere.

5. Mr. D'Costa, the learned senior counsel appearing on behalf of the petitioner sought to contend that in fact, though the petitioner was put in possession of the said canteen premises, the occupation certificate for the

said premises was obtained only in February, 1990 and also the requisite 3-Phase electric connection was obtained only in the months of October/November, 1989 and as such the learned senior counsel for the petitioner contended that though the petitioner had taken possession of the suit premises, the petitioner could not run the canteen effectively except to supply biscuits, certain snacks, tea, coffee and therefore the petitioner ought not to have been made to pay the licence fee for the aforesaid period of three months. Mr. D'Costa took me through the evidence recorded before the learned Estate Officer as well as the relevant correspondence entered upon between the parties. Mr. D'Costa, learned senior counsel's main contention is that both the learned Estate Officer and the learned District Judge have totally erred in not appreciating the evidence properly and had committed an error apparent on the face of the record inasmuch as the premises were not fully ready and merely because the petitioner started the canteen on 9th June, 1989, it does not mean that the petitioner ought to be made to pay the licence fee during the months of June, July and August. The learned senior counsel does not dispute that the petitioner was afforded a fair opportunity of hearing before the learned Estate Officer by way of producing evidence and material and a fair hearing was also given before the Estate Officer. A grievance is made that the said 3-phase electric connection was not given and only a single phase electricity was provided. As such the canteen could not be run in a full-fledged manner. Over and

above even proper gas connection could not be obtained as the respondent Corporation had not given a proper N.O.C. Therefore the contention of the learned senior counsel for the petitioner is that the petitioner was put to a lot of hardship due to not being provided with electricity, water supply, gas connection etc. The Petitioner could not run the said canteen premises on a proper basis so as to enable him to have sufficient business.

6. The learned counsel appearing on behalf of the respondent-Corporation Mr. Kantak strongly contended that this Court entertaining this petition under Articles 226 and 227 of the Constitution of India, should not interfere with the findings in both the aforesaid orders, inasmuch as it is not a case of '"no evidence" at all. He also strongly submitted that this Court cannot sit in appeal and re-appreciate the evidence tendered before the learned Estate Officer and come to a different finding. Mr. Kantak strongly submitted that the petitioner was afforded a fair opportunity before the learned Estate Officer to produce all evidence and also lead evidence and was afforded a fair opportunity of hearing. Over and above the appellate authority being the learned District Judge had fully appreciated the matter and concurred with the findings of the learned Estate Officer with a detailed reasoning then this Court exercising writ jurisdiction is not sitting in appeal to re-appreciate the same. Mr. Kantak also pointed out that this is not a case of lack of jurisdiction on the part of the learned Estate Officer to pass

the said order so as to enable this Court to interfere. Mr. Kantak also pointed out from the material on record especially the petitioner's own letter dated 18th September, 1989 wherein the petitioner has categorically stated that he had started running the canteen from 9th June, 1989. He also brought to my notice that the petitioner had clearly mentioned that some of the adjoining premises wherein book stall etc. were to be set up, they had not taken possession of the same as the same were not complete in all aspects. Therefore Mr. Kantak contended that if the petitioner was not keen to run the canteen premises, he should not have taken possession of the premises and then taken the stand that he could not run the same for lack of certain facilities. In any event, Mr. Kantak submitted that there is no dispute that the petitioner was conducting business from 9th June, 1989 and as such the petitioner had to pay the licence fee for the said three months.

7. Mr. Kantak in that behalf relied on the judgment of the Supreme Court in ***Surendra Nath Bibra v. Stephen Court Ltd. (AIR 1966 S.C. 1361)*** wherein the Supreme Court has held that if a tenant is using a substantial portion of the property of the landlord, leased to him, without much inconvenience, he cannot take a stand that he would not pay any compensation for the use of the property merely because part of the premises was not made available to him. In the light of the aforesaid judgment, Mr. Kantak contended that once the licencee has taken

possession and conducting the canteen business, the licencee was very much liable to pay and cannot set up the plea of non-availability of certain amenities. If that be so, the petitioner ought not to have taken possession of the same like the other bidders.

8. Having heard both the learned counsel and after perusal of the judgment and order of the learned Estate Officer as well as the judgment and order of the learned District Judge in appeal and after perusal of the evidence and material on record, it is clear that this is not a case of "no evidence" at all or that it is a case of total lack of jurisdiction to enable the High Court to exercise the jurisdiction under Articles 226/227 of the Constitution of India. I also do not find any perversity in appreciation of evidence.

9. I also do not find any error apparent from the record so as to justify interference when both the lower authorities have by a detailed analysis come to a conclusion that the petitioner was liable to pay the licence fee for the aforesaid three months. The petitioner had willingly taken the said premises and started the canteen premises knowingly that it may have lacked certain facilities during the earlier period. The risk was taken by the petitioner and the petitioner cannot now turn round and say that as all the facilities were not fully available as such he was not liable to

pay the licence fee.

10. Under the aforesaid facts and circumstances, I do not find any ground made out for this Court to entertain the present petition in writ jurisdiction and to interfere with the concurrent findings of both the lower authorities. Hence, Rule stands discharged with no order as to costs.

Dr. S. RADHAKRISHNAN, J.

sl.